

Amend Section 28.59
Title 14, California Code of Regulations
Re: Shiner Perch Take or Possession, Transport of Surfperch

- Under current regulations, the take or possession of all surfperch of the family Embiotocidae, including shiner surfperch (*Cymatogaster aggregata*), commonly termed shiner perch, is prohibited in San Francisco and San Pablo bays (bay) during the period April 1 through July 31 (Section 28.59, Title 14, CCR). Also under current regulations, vessels entering the bay with surfperch aboard that were taken outside of the bay must remain underway without fishing gear in the water until arriving at their home port or launch site (Section 28.59, Title 14, CCR). These regulations were adopted by the Commission on December 7, 2001 for the 2002-2003 sport fishing seasons, as part of the Commission's regular biennial adoption of changes to sport fishing regulations.

However, emergency action taken by the Commission in March of this year, exempts shiner perch from the prohibition on the take or possession of surfperch in the bay during the period April 1 through July 31. The emergency action approved by the Commission in March is scheduled to expire in mid to late July of this year.

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bay with sport-caught surfperch aboard (that were taken outside the bay) to remain underway without fishing gear in the water until arriving at their home port or launch site.

While most surfperch species are harvested in the bay primarily for human consumption, shiner perch are utilized almost exclusively as a preferred live bait for the seasonal sport take of California halibut and striped bass. California halibut and striped bass, in combination with salmon, sturgeon and leopard shark, support the primary sport fisheries in the bay. The April through August sport fishing seasons for California halibut and striped bass coincide closely with the April 1 through July 31 prohibition on the take or possession of surfperch, including shiner perch, in the bay, adopted by the Commission in December 2001.

When the Commission adopted the April through July prohibition on the take of surfperch, the closure was not expected to have a significant impact on the California halibut and striped bass sport fisheries. Only two public comments on surfperch regulations (directed at the 5-surfperch aggregate bag limit and not the seasonal surfperch closure in the bay) were received during Commission consideration of changes to ocean sport fishing regulations. During adoption of these changes, it was expected that alternative species of fish (anchovy, smelt) would be adequate for use as bait for California halibut and striped bass during the surfperch closure in the bay. However, bay area sport fishermen and bait dealers have since indicated that this is not the case, and that 35,000 to 60,000 shiner perch are taken and sold as bait for California halibut and striped bass each year in support of these fisheries during the spring and summer months.

The inability of sport fishermen to take and possess surfperch during April through July means that anglers may not catch (take) their own shiner perch in the bay (they are usually caught in small traps as authorized pursuant to Section 28.75), and may not possess shiner perch in the bay during this period even if purchased from bait dealers. This places severe limits on the ability of anglers to successfully participate in the popular seasonal fisheries for California halibut and striped bass. It is now expected that this will also result in economic hardship for local commercial live-bait fishermen and bait and tackle shop owners that traditionally supply shiner perch to the bay area California halibut and striped bass anglers. Three commercial harvesters and three bait and tackle shops supply most of the shiner perch to bay area anglers.

During Commission adoption of the 2002 - 2003 sport fishing regulations, the Department recognized that shiner perch are numerous relative to other surfperch and are important as a bait species. Therefore, the Department recommended and the Commission adopted a 20-fish bag limit for shiner perch during the open season for surfperch. This shiner perch bag limit is four times the aggregate bag limit for other surfperch, but is also a substantial reduction from the unlimited number of shiner

perch that could be taken by sport fishermen prior to 2002. The Department recently reassessed shiner perch data for the bay and determined that the authorized take and possession of shiner perch in the bay under the recently adopted 20-fish daily bag and possession limit would not jeopardize the shiner perch resource and would help support the important California halibut and striped bass fisheries of the bay.

Therefore, adoption of an exemption for shiner perch to the seasonal surfperch closure in the bay aids in preserving the bay's popular sport fisheries for California halibut and striped bass. Also, adoption of this change will forestall significant losses in income for bay area bait harvesters and bait and tackle shop owners that depend to a large degree this time of year on the sale of live shiner perch to recreational anglers seeking California halibut and striped bass.

The proposed regulation would also eliminate the current provision that requires vessels entering the bay with surfperch onboard that were taken outside the bay to remain underway without gear in the water. This provision was originally adopted last year in conjunction with the seasonal surfperch closure in the bay to provide an opportunity for anglers, who take surfperch aboard vessels outside the bay, to transport those surfperch back to their home port in the bay during the closure. However, surfperch are rarely taken aboard vessels fishing outside of the bay because most of these vessels are in pursuit of salmon and striped bass. As a result, this provision has been determined to be generally unnecessary for the effective management of surfperch.

Also, the Department's enforcement staff has determined that, for all practical purposes, the regulation undermines the seasonal closure on surfperch in the bay by making enforcement problematic. Department Marine Region patrol officers point out that they would have to actually see a person with a line in the water before they can enforce the possession restriction on surfperch during the closure in the bay. This is very difficult given the limited number of patrol craft available for use in the bay and because of the recent diversion of Department patrol vessels for homeland defense in large bays such as San Francisco and San Pablo bays. Also, this provision provides a loophole that impedes dockside enforcement of the surfperch closure in the bay. Any vessel coming to the dock with surfperch can claim that its surfperch were caught outside the bay, which makes dockside enforcement of the surfperch closure impossible unless the vessel is tracked from the ocean to the landing. Therefore, the Department's marine patrol encourages the repeal of this part of Section 28.59, Title 14, CCR.

- (b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Sections 200, 202, 205, 215, and 220, Fish and Game Code.

Reference: Sections 200, 202, 205, 206, 215, and 220, Fish and Game

Code.

- (c) Specific Technology or Equipment Required by Regulatory Change:

None.

- (d) Identification of Reports or Documents Supporting Regulation Change:

Karpov, Konstantin A. Douglas P. Albin, and Wade H. Van Buskirk, 1995, The Marine Recreational Fishery in Northern and Central California, Department of Fish and Game, Fish Bulletin 176, 192 pp.

Department of Fish and Game, 2002, Information Item for the March 7-8, 2002 Fish and Game Commission Meeting, Recreational Surfperch Regulations.

- (e) Public Discussions of Proposed Regulations Prior to Notice publication:

The issue of reexamining surfperch regulations, including exempting shiner perch from the seasonal closure on surfperch in the bay, was discussed as an informational item on the agenda of the Fish and Game Commission's Marine Subcommittee Meeting of March 6, 2002 and the Commission's regularly scheduled meeting of March 7, 2002 in San Diego. These meetings were attended by representatives of United Anglers of California and United Anglers of Southern California who supported the exemption of shiner perch from the closure on surfperch in the bay. No public comments were provided regarding the regulation restricting the movement of vessels in the bay with surfperch aboard that are taken outside the bay.

IV. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change: The primary alternative considered was to exempt shiner perch from the closed season in the bay, but to reduce the daily bag limit for shiner perch from the recently adopted 20-fish per day during the open season, to a lesser number (6 to 12 shiner perch per day) during the closed season in the bay. This alternative was rejected on the basis that shiner perch are sufficiently abundant in the bay to justify retaining the recently adopted 20-fish bag limit year-round.

With regard to repealing the restriction on the movement of vessels in the bay that have surfperch aboard that are taken outside the bay, efforts were made to reword this provision to make it more readily enforceable. This effort was unsuccessful and the decision to repeal the provision was deemed best in the greater interests of maintaining an ability to effectively enforce the seasonal closure on surfperch in the bay.

- (b) No Change Alternative: If an exemption for shiner perch to the seasonal surfperch closure in the bay is not adopted on a long term basis (following the emergency exemption of shiner perch), the California halibut and

striped bass recreational fisheries and bait suppliers will continue to be adversely affected by the current prohibition on take and possession of shiner perch in the future following repeal of the emergency regulation. Also, unless the provision governing vessel movement in the bay during the seasonal surfperch closure is repealed, enforcement of the seasonal surfperch closure is expected to continue to be compromised.

- (c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Adoption of the proposed changes will benefit commercial bait harvesters and bait and tackle shop owners who will be able to continue to supply shiner perch to recreational anglers in the bay during the seasonal prohibition on take and possession of surfperch there. Adopting the proposed changes will avoid expected losses of between \$35,000 and \$75,000 to bait suppliers unable to sell shiner perch to sport fishermen who could not possess them during the closure under current sport fishing regulations.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

Informative Digest/Policy Statement Overview

Under regulations adopted on December 7, 2001, by the Fish and Game Commission (Commission) the take or possession of all surfperch of the family Embiotocidae, including shiner perch (*Cymatogaster aggregata*), is prohibited in San Francisco and San Pablo bays (bay) during the period April 1 through July 31 (Section 28.59, Title 14, CCR). Also under existing regulations, vessels entering the bay with surfperch aboard that were taken outside of the bay must remain underway without fishing gear in the water until arriving at their home port or launch site (Section 28.59, Title 14, CCR). However, emergency action taken by the Commission in March, 2002 exempts shiner perch from the prohibition on the take and possession of surfperch in the bay during the period April 1 through July 31. The emergency regulation approved by the Commission is scheduled to expire in mid to late July of this year.

Regulatory changes being proposed as a part of this rulemaking would exempt shiner perch from the current prohibition on the sport take or possession of surfperch in the bay during April 1 through July 31. Also, changes being proposed as a part of this rulemaking would eliminate the provision of Section 28.59, Title 14, CCR, that requires vessels entering the bay with sport-caught surfperch aboard (that were taken outside the bay) to remain underway without fishing gear in the water until arriving at their home port or launch site.

These changes are being proposed to ensure that the popular sport fisheries for California halibut and striped bass in San Francisco and San Pablo bays are not unduly constrained due to anglers being unable to take or possess shiner perch (for bait). Also, the regulation changes are expected to strengthen the Department's ability to enforce the seasonal surfperch closure in these bays by elimination of the provisions governing the movement of vessels entering the bays during the surfperch closure when surfperch taken outside the bay are aboard those vessels.